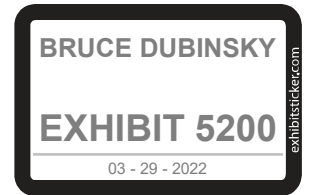


# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



IN RE:  
CUSTOMS AND TAX ADMINISTRATION  
OF  
THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX  
REFUND  
SCHEME LITIGATION

No. 18-MD-2865-LAK

**EXPERT REPORT OF BRUCE G. DUBINSKY**  
**MST, CPA, CFE, CVA, CFF, CAMS, MAFF**

**December 31, 2021\***

\*Updated on February 1, 2021. See attached cover letter.

## I. THE ASSIGNMENT

1. In April 2021, I was retained by the law firm of Hughes Hubbard & Reed LLP (“Hughes Hubbard” or “Counsel”), counsel for Skatteforvaltningen (“SKAT”), to provide forensic accounting analyses and render certain expert opinions and conclusions related to an international dividend withholding tax refund scheme (the “Assignment”). In this report, I render opinions related to:
  - Examining and explaining the various steps of certain purported Danish securities transactions that were designed, managed, and purportedly executed by Solo Capital or affiliated entities (“Solo” or “Solo Capital”) on behalf of approximately 173 United States pension plans (collectively the “Plans”)<sup>1</sup> from 2012-2015 in connection with the Plans’ applications for dividend withholding tax refund claims to SKAT (the “Solo Trades”);<sup>2</sup>
  - Whether the Plans purchased actual shares of Danish securities as part of the Solo Trades;
  - Whether the Plans received actual dividends as a result of the Solo Trades; and
  - Who received the proceeds from the refund claim payments made by SKAT.

## II. EXPERT BACKGROUND AND QUALIFICATIONS

2. I am the Managing Member of Dubinsky Consulting, LLC (“Dubco”), a consultancy practice that places special emphasis on providing forensic accounting and dispute analysis services to law firms litigating commercial cases, as well as corporations, governmental agencies, and law enforcement bodies in a variety of situations.
3. I earned a Bachelor of Science Degree in Accounting from the University of Maryland, College Park, MD and a Master’s in Taxation (“MST”) from Georgetown University,

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<sup>1</sup> I understand that there are an additional 16 plans that are not at issue in this litigation.

<sup>2</sup> I refer to the transactions as “purported” because, throughout my review and analyses of the documents provided in this matter, I have found no evidence that Solo Capital, its affiliated entities, or the Plans actually traded any real shares of the underlying Danish stock, nor have I seen evidence that any cash moved from one entity to another for payment of purchase or sale of the shares or stock loans. Lastly, I have not seen any proof that any shares that were purportedly part of the transactions were ever held by any custodians on behalf of Solo Capital and the Plans. See discussion *infra* for a detailed analysis on these points.

but not limited to:

- All documents produced by the defendants and U.S.-based third parties in this action;<sup>4</sup>
- A database of documents of Solo Capital and related entities obtained under court order from a related litigation in Dubai;<sup>5</sup>
- Documents produced by various foreign entities in response to letters of requests filed in this action under the Hague Convention on Taking Evidence Abroad.
- Documents produced in this action from SKAT's files;
- Bank statements for Solo Capital and related entities; and
- Various deposition transcripts for persons deposed in this matter and the exhibits to those depositions.

13. In addition to the information to which I was provided access, I obtained information where necessary to my work herein from publicly available sources. I also consulted applicable professional treatises, sources and publications regarding professional standards, methodologies, and related requirements when necessary.

14. Under my direct supervision, the work conducted by associates and any others in connection with the Assignment was planned, supervised, and staffed in accordance with applicable professional standards by which I am bound.

15. I conducted a detailed inspection and review of voluminous documents from a variety of sources including emails, brokerage statements, bank records, trade confirmations, corporate documents, regulatory filings, dividend tax reclaim submissions, deposition transcripts and exhibits, and publicly available documents. A complete listing of the materials I reviewed and considered in forming my opinions and conclusions rendered in this report is attached

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<sup>4</sup> I was provided access to multiple Relativity databases containing documents produced in this litigation. I had the ability to review the documents and electronic data stored in the database and run queries as I deemed necessary to conduct my work in this case.

<sup>5</sup> I have been informed by counsel for SKAT that a small percentage of documents in this database are being withheld from all parties in the U.S. litigation as privileged, and that another small percentage is not available yet because they are undergoing a privilege review. Further, I have been informed that a hard drive potentially containing Solo Capital and/or related entities documents has been found but is encrypted and cannot be accessed. I do not believe that these facts impact the conclusions of this report and reserve the right to supplement this report if/when more documents become available.

hereto as Appendix B.<sup>6</sup>

#### IV. SUMMARY OF OPINIONS

16. Based on my training, education and professional work experience, and the results of my investigation and analysis in this case (as more fully described in detail throughout this report), I have concluded that:

- There is no evidence that the Plans ever owned actual shares of Danish companies resulting from the purported Solo Trades, or received actual dividends issued by the Danish companies whose shares were allegedly purchased by the Plans.
- The Solo Trades were pre-arranged, closed loop, circular transactions in which a short-seller purported to sell Danish shares to the Plans, but only obtained the non-existent shares by purportedly ultimately borrowing those same shares from the Plans that also did not have any shares. In effect, in all of the 2,559 Solo Trades, a seller “sold” shares it did not have to a Plan and purported to cover that “sale” by supposedly borrowing those same shares from the Plan, which never had the shares to begin with.
- The Plans did not have sufficient capital, liquidity, or creditworthiness to execute purchases of actual shares in the amounts and volumes of the Solo Trades.
- The overwhelming majority of the “profits” received by the Plans were derived from receiving a small fraction of the dividend tax refund claim paid by SKAT, with *de minimis* (if any) profits from anything but the refunds. Most of the proceeds from the tax reclaim payments went to Solo Capital or affiliated entities. Most of the remaining portion of the proceeds from the tax reclaim payments went to individuals or entities controlled by those individuals (the “Recruiters”) who recruited people to establish additional pension plans for purposes of submitting more reclaim applications.

17. The essence of the Solo Trades is that all these purported transactions involved the circular

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<sup>6</sup> Access to documentation was not limited in any manner, and I was allowed to search for information and documentation that both supported the opinions contained herein, as well as countervailing evidence, if any.

affiliated entities.<sup>183</sup>

## F. Background and discussion on legitimate stock lending transactions

123. Legitimate securities lending is an over-the-counter market that facilitates the borrowing and lending of securities. Typically, institutional investors such as pension funds, mutual funds and sometimes even charitable foundations will lend their security portfolios in exchange for cash collateral.<sup>184</sup> The lender will then invest the cash collateral and derive a return, enabling the lender to increase the yield on their portfolio.<sup>185</sup> Borrowers are typically hedge funds, options traders and other asset managers who borrow securities often for the purpose of covering short-sale positions, which need to be covered due to regulatory requirements in various jurisdictions.<sup>186</sup> Both parties to the lending transaction generally rely on intermediaries (*e.g.*, custodians and prime brokers) to facilitate the transaction and manage counterparty risk.<sup>187</sup>
124. To manage the counterparty risk of the stock loan, the borrower provides the lender with cash collateral that is typically greater than the market value of the borrowed securities.<sup>188</sup> Therefore, in the event of a default by the borrower, the lender can liquidate the collateral and use the proceeds to repurchase the loaned securities in the open market. In order to ensure that the lender has sufficient collateral, the borrowed securities are typically marked-to-market on a daily basis.<sup>189</sup> If the market value of the loaned securities increases throughout the loan term, then the initial collateral provided by the borrower may be insufficient and the borrower will be required to provide additional collateral to the lender, and vice versa.<sup>190</sup> At the end of the loan, the borrowed security and related collateral are then returned to their respective owners.

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<sup>183</sup> David Segal, *Where in the World Is Denmark's \$2 Billion?*, The New York Times, October 5, 2018.

<sup>184</sup> Viktoria Baklanova, Adam Copeland & Rebecca McCaughrin, *Reference Guide to U.S. Repo and Securities Lending Markets*, Federal Reserve Bank of New York Staff Reports, Revised December 2015, at 21-33.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> <https://www.sec.gov/divisions/investment/securities-lending-open-closed-end-investment-companies.htm> (last visited December 23, 2021).

<sup>189</sup> <https://www.sec.gov/divisions/investment/securities-lending-open-closed-end-investment-companies.htm> (last visited December 23, 2021).

<sup>190</sup> Viktoria Baklanova, Adam Copeland & Rebecca McCaughrin, *Reference Guide to U.S. Repo and Securities Lending Markets*, Federal Reserve Bank of New York Staff Reports, Revised December 2015, at 21-33.

the contract.<sup>197</sup> Margin requirements are set by the exchange on which the futures contract is traded, not by the individual brokerage firms (although some brokerage firms may set higher margin rates than what is stipulated by the exchanges). Standard margin requirements can range from 5 percent to 20 percent, depending on the specific country and contract being traded, although some contracts may have lower margin requirements.<sup>198</sup> Therefore, unfavorable price movements could result in a demand to post additional margin funds. If an investor fails to meet a margin call, its brokerage firm may close out of the futures position or sell other assets held in the account to cover the margin deficiency.

130. Investors typically use forwards and futures contracts as part of a “hedging strategy” to lock in a purchase or sale price of a stock in advance, thereby removing the uncertainty about any subsequent changes in the market price of the underlying stock and eliminating the risk of any unexpected losses.

**VI. OPINION NO. 1: THERE IS NO EVIDENCE THAT THE PLANS EVER OWNED ACTUAL SHARES OF DANISH SECURITIES FROM THEIR SOLO TRADES, OR RECEIVED ACTUAL DIVIDENDS ISSUED BY THE DANISH COMPANIES WHOSE STOCK WAS PURPORTEDLY USED IN THE SOLO TRADES**

131. I have reviewed and analyzed the evidence available in this case to determine whether there is any indication that the Plans purchased or owned actual Danish securities or received actual dividends issued by Danish companies. Among the steps taken, I reviewed (i) representations made by or on behalf of Solo Capital concerning the identity and location of any sub-custodians used by the Solo Custodians to custody Danish securities purportedly owned by the Plans and documents related thereto;<sup>199</sup> (ii) Solo Capital’s business records for any indicia of share ownership; (iii) Solo Capital’s bank records for any indication of dividend receipt; and (iv) each leg of the Solo Trades to determine whether actual shares

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<sup>197</sup> <https://www.finra.org/investors/learn-to-invest/types-investments/security-futures> (last visited December 8, 2021).

<sup>198</sup> <https://www.finra.org/investors/learn-to-invest/types-investments/security-futures> (last visited December 8, 2021); *see also* [https://www.theice.com/publicdocs/futures/Futures\\_Europe\\_Single\\_Stock\\_Futures\\_KID.PDF](https://www.theice.com/publicdocs/futures/Futures_Europe_Single_Stock_Futures_KID.PDF) (last visited December 13, 2021)

<sup>199</sup> Solo Capital was purportedly the prime custodian for the Solo Trades for the Plans and then supposedly entered arrangements with others to act as sub-custodians. *See* ELYSIUM-03283228; ELYSIUM-04117677; *see also* discussion *infra* regarding the sub-custodians.

Danish securities for the Plans, nor any evidence that the Solo Custodians used any sub-custodians to custody any such securities.

143. Similarly, based on a review of the Solo Custodian's bank records, I have seen no evidence that they received, on behalf of the Plans, actual dividend payments arising from the ownership of Danish shares, either from Danish issuers directly or from other custodian institutions.
144. By contrast, my review of the Solo Custodians' business records shows that the Solo Custodians kept detailed records of the paper trades described in subsection (c) below, and of the payments made to the various participants of the scheme.
145. The lack of any third-party evidence or business records reflecting holdings of actual securities and the lack of receipt of actual dividends underscores my conclusion that the Solo Trades did not include any actual Danish securities or dividends.

**C. The Solo Trades were pre-arranged, inter-dependent, circular, paper transactions in which no actual securities were bought or sold**

146. As part of my analyses, I reviewed records related to all 2,559 of the Solo Trades purportedly orchestrated by Solo Capital on behalf of the Plans. Based on this review, I concluded that the Solo Trades gave the appearance that the Plans purchased Danish securities, but in fact no actual Danish securities were bought or sold. Rather, in each case, the Plan purportedly purchased the securities from a short-seller—i.e., a counterparty that did not own any Danish securities at the time of each purported sale. To “cover” the short in order to be able to deliver the securities to the Plan on the settlement date, the seller purportedly borrowed the shares, but in each case the shares were borrowed in essence from the very Plan that purportedly purchased those shares from the seller. The seller never had any shares to sell, and the Plan never acquired any shares to lend. In short, Solo Capital attempted to create shares out of thin air.
147. In order to generate a paper trail, each of the purported Solo Trades involved a similar closed loop, circular trading pattern, involving (1) ostensibly the purchase of Danish equity securities, (2) the use of purported stock loans to finance the purchases by Plans that otherwise had no money, and (3) purported forward/futures hedging transactions, all related to certain Danish equities structured around their respective dividend payment dates. After



the dividend payment date, the purported trades were subsequently reversed over several weeks or months to close out the position. The only “profits” earned by the Plans were generated through the receipt of WHT refunds ultimately received from SKAT, net of substantial fees drained from the refund proceeds by Solo Capital and others. There were no material profits generated from the purported trading activity itself. In fact, in each case, the paper transactions were designed to net to zero for the trading counterparties.

148. As discussed further below, each of the Solo Trades are characterized by the same trading pattern. From August 2012 through December 2013, the transactions purportedly executed by the Plans followed what I refer to as a “Simple Trading Loop”. Beginning in March 2014, Solo Capital added an additional layer of counterparties and brokers to the circular trading pattern and followed what I refer to as a “Complex Trading Loop” (*see discussion supra* regarding simple and complex loop Solo Trades).

149. The parties to each leg of the securities purchases, stock loans, and forward hedges were entities that “on-boarded” with the Solo Custodians, and thus were all “trading” exclusively on the Solo Capital platform. Importantly, none of these thousands of transactions were executed with parties in the open market.

150. Accordingly, it is my conclusion that all 2,559 of the Solo Trades were basically clones of each other; all were closed loop, circular paper transactions with no actual securities traded.<sup>205</sup>

### **1. Analysis of the Solo Trades purportedly executed by the Plans**

151. Upon my request, I was provided a list from Counsel of the 2,559 refund claims submitted to SKAT by the Defendants from August 2012 to April 2014. Each refund claim filed by the Defendants was linked to a unique series of transactions which resulted in the purported receipt of a dividend by the Plans. This is what I have defined as the Solo Trades. For each refund claim for each security purportedly owned by each Plan, I searched for and

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<sup>205</sup> I used the term clones to describe the basic structure in all the Simple Loop Solo Trades and basic structure in all the Complex Loop Solo Trades being virtually identical in form, with varying use of different Danish equities, forwards and futures and stock loan terms and pricing. The fact that the Solo Trades used different equities at times, different stock loan pricing, different forward pricing, etc, does not undercut that they were all clones of one another that were all pre-designed and executed on paper to obtain false tax refunds from SKAT.

counterparties—everything was orchestrated in advance by Solo Capital on behalf of the Plans. The “brokers” invariably filled each and every “order” as per Solo Capital’s direction because they did not actually go into the market to obtain real shares.

**F. The Plans did not have sufficient capital, liquidity or access to real credit to complete the purported Solo Trades but for the circular nature of the structured scheme**

213. Based upon a review of available records and bank statements, the LLC sponsors of the Plans had limited, if any, legitimate business operations and were, at best, thinly capitalized, with opening bank balances of typically only a few thousand dollars or less.<sup>264</sup> As a result, the LLC sponsors of the Plans typically had little if any money to contribute to the Plans, or to pay salary to the plan participants from which the participants could contribute to the Plan.
214. Not surprisingly, the newly formed 401(k) plans created by these closely held LLCs were also thinly capitalized, as few contributions were made to the Plans. As a result, the Plans lacked the liquidity and financial wherewithal necessary to purchase the shares that were supposed to be the subject of the Solo Trades and which were worth hundreds of millions of dollars in certain instances.<sup>265</sup>
215. The purported trades executed by the Plans were all structured to appear as over-the-counter (“OTC”) trades.<sup>266</sup> Despite the Plans not having the financial wherewithal to execute trades in the hundreds of millions of dollars, nor the credit history to back up such trades, nevertheless the trades were filled nearly instantaneously (see *e.g.* discussion *infra* on the sample Solo Trades purportedly executed by the Bernina Plan and the Loggerhead Plan). The Plans’ ability to instantaneously and repeatedly obtain financing through the stock loans, notwithstanding the Plans’ complete lack of creditworthiness, is further evidence that the purported purchases of securities were not real. Consistent with this pattern, it appears that the offshore stock loan counterparties such as Neoteric Limited were also thinly capitalized and would not have had capital to use as the cash collateral component of the stock loan

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<sup>264</sup> See, for example TD\_0001381-1445 (Ackview LLC); JPM00000198-282 (Blackrain Pegasus LLC); OCEANFIRST\_00001573-1642 (Oaks Group LLC).

<sup>265</sup> See Exhibit 3

<sup>266</sup> OTC means that investors engage in transactions with each other through informal networks rather than on a centralized exchange like the Copenhagen Stock Exchange.

transactions.

**G. The Trading Pattern At North Channel Bank Is Consistent With The Solo Trades**

216. Two of the Plans that participated in the Solo Trades also participated in similarly structured trades at another custodian bank, North Channel Bank (“NCB”). In the Spring of 2014, the two Plans, the Omineca Pension Plan (“Omineca”) and Vanderlee Technologies Pension Plan (“Vanderlee”) participated in 5 and 6 structured trades, respectively, at NCB.<sup>267</sup>
217. Current management of NCB performed an investigation of tax vouchers issued by NCB on behalf of various U.S. pension plans for the purpose of submitting refund claims to SKAT. According to Gunnar Volkers, a current managing director at NCB, each of the tax vouchers issued for the Omineca and Vanderlee Plans was false.<sup>268</sup> Mr. Volkers confirmed that the Plans’ structured trades at NCB were “circular” and “designed” to create a “closed shop” in that all participants in the trades were customers of NCB.<sup>269</sup> Because of this design, NCB held no shares on behalf of the Plans (or any of its other customers) as a result of the trades, and the purported shareholdings on the NCB-issued tax vouchers were “fictitious.”<sup>270</sup> Since there were never “any real shares,” Mr. Volkers further confirmed, NCB never received “any real dividend payment” on behalf of the Plans (or any of its other customers), and the NCB-issued tax vouchers did not reflect “real money credited to the account.”<sup>271</sup> In September 2019, NCB pleaded guilty to “collusive serious fraud against the Danish state,” which fraud included the structured trades at NCB in which the Omineca and Vanderlee Plans participated.<sup>272</sup> Mr. Volkers’ testimony regarding the purported trading through NCB is consistent with my analysis and conclusions for the Solo Trades.

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<sup>267</sup> SKAT\_MDL\_001\_00060281 (Omineca) ; SKAT\_MDL\_001\_00059631 (Vanderlee).

<sup>268</sup> Volkers Tr. at 13:18-14:1, 19:16-45:8.

<sup>269</sup> *Id.* at 19:21-20:17, 76:17-77:14.

<sup>270</sup> *Id.* at 54:11-57:2.

<sup>271</sup> *Id.* at 56:18-59:5.

<sup>272</sup> *Id.* at 71:2-75:18.